No. 09-1304

JUN 28 2010

In The

Supreme Court of the United States

PADMA RAO,

Petitioner,

v.

CITY OF EVANSTON, ILLINOIS,

Respondent.

On Petition For Writ Of *Certiorari*
To The Appellate Court Of Illinois,
First District

PETITION FOR REHEARING

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PETITION FOR REHEARING

The grounds for this Petition are opinions of this Court that were not available at the time that the Petition for Writ of *Certiorari* was prepared, as well as contentions in equity and logic that were not presented previously.

In Light Of *Salazar v. Buono*

Waiver Of Padma's Religious Arguments Is Precluded By Res Judicata

The trial court's order of 24 August 2007 (Pet. App. 33) states at part 3 that Padma's Affidavit (Pet. App. 60-62) regarding her religious precepts and that the City's actions violate Padma's religious rights, " . . . was presented in Court . . . [and] is made part of the record." Padma did not appeal from that part of the order and specifically excluded that portion from her appeal. The City never challenged that part of the order, either by timely motion for reconsideration or by timely cross-appeal. Therefore, the trial court's decision that Padma's Affidavit (Pet. App. 60-62) was presented before that court and was part of the record became *res judicata*. *Salazar v. Buono*, 559 U.S. ___; 130 S. Ct. 1803 at 1814-1815; 176 L. Ed. 2d 634 at 644-646 (2010). As such, the Appellate Court lacked jurisdiction to overturn the trial court's decision that Padma's religious arguments were presented at trial and therefore properly before all subsequent reviewing courts. *Ibid.* The Appellate Court lacked jurisdiction to waive Padma's arguments in defense of her

religious rights. *Ibid.* Padma respectfully requests this Court to hear her arguments.

Government Should Be Accommodating Of Religion, Not Hostile Towards It

In *Salazar v. Buono*, a Latin cross had been placed upon government land and had been replaced by private citizens for nearly seven decades. *Salazar v. Buono*, 559 U.S. ___; 130 S. Ct. 1803 at 1817; 176 L. Ed. 2d 634 at 647 (2010). This Court noted that the cross is a Christian symbol and that religious Easter services were conducted at the cross. *Id.* at 1816, 1812; at 646, 641-642. This Court approved the government's efforts to accommodate the cross, suggesting that to do otherwise would create religiously based divisiveness. *Id.* at 1817-1818; at 647-648. This Court added that the government is not obliged to ignore religion's role in society, and that government must sometimes accommodate religious practices and divergent values. *Id.* at 1818-1819; at 649. Justice Alito's concurrence stated that demolition of the cross could be interpreted as hostility of the government towards religion. *Id.* at 1823; at 653. This Court stated that *Salazar* was not well-suited to address religious rights due to its procedural posture. *Id.* at 1820; at 651.

In the current case, the tree in question is at least mainly private property (C00093, C00121, C00151, C00154, C00155, C00216-Ex13) and it was not necessary for the City to kill the tree (C00093,

C00118, C00121, C00154, C00216-Ex13). The tree had been standing for nearly four decades (C00069, C00137) and had been part of the property since before Padma moved there. The City not only offends Padma's Hindu religious beliefs by needlessly killing her tree, but also forces Padma to violate her own religious precepts by coercing Padma to fund the abhorrent and unnecessary killing of her tree (Pet. App. 60-62). Thus, the City adopts a position towards Padma's religion, Hinduism, that is not merely insensitive or inconsiderate, but downright hostile. The City seeks to compel Padma to abandon her Hindu beliefs or else lose her home.

In *Salazar v. Buono*, removal of the cross would have served the purpose of satisfying a judgment regarding a Constitutional challenge to the display of the cross. Instead of ignoring the potential ramifications of complying with the court order, the Government bent over backwards to find a solution that would not offend Christian religious sensibilities or the Constitution. Here, needlessly killing the tree and forcing Padma to fund the killing or else lose her home serves no purpose except to antagonize Padma's Hindu religious beliefs. In *Salazar*, Justice Alito expressed concern that destruction of the cross could appear to be an expression of hostility against religion. *Id.* at 1823; at 653. This hostility would most likely be perceived to be directed against the religion that reveres the cross, namely Christianity. Here, the City's needless killing of Padma's tree, a living entity that is revered by Hindus (Pet. App. 60-62), is an

unmistakable expression of hostility directed against Hinduism. If the Government is encouraged to be accommodating to a Christian symbol on government land in *Salazar*, how can the City's hostility towards Hinduism as it relates to private property be tolerated? Does the First Amendment allow government to select which religions to accommodate and which religions to persecute? The procedural posture of this case permits this Court to address the issue of religious rights clearly and directly. This Court should take this case in order to clarify religious rights relative to the opinion in *Salazar v. Buono*.

In Light Of *Stop The Beach Renourishment, Inc. v. Florida Department Of Environmental Protection*

In *Stop the Beach Renourishment, Inc. v. Florida Department of Environmental Protection*, No. 08-1151, 560 U.S. ___; 2010 U.S. LEXIS 4971 (2010), this Court stated that, in general, state law defines property interests. *Id.* at [*9]. This Court also stated that a taking occurs when government uses its property in a manner that destroys private property, or when private property is recharacterized as public property. *Id.* at [*19]-[*24]. This Court stated that the takings clause of the Fifth Amendment forbids judicial takings. *Id.* at [*21]-[*24].

In this case, Illinois law defines a standing tree as real property and states that the common elements of a condominium are owned by the unit owners as

tenants in common and are not owned by the condominium association (Pet. 16-18). *Osborn v. Rabe*, 67 Ill. 108 at 109 (1873) (a standing tree is real property); *Tassan v. United Development Company*, 88 Ill. App. 3d 581 at 596; 410 N.E. 2d 902 at 914 (1 Dist. 1980) (in a condominium, the association does not own the common elements; the unit owners own the common elements as tenants in common); Illinois Condominium Property Act 765 ILCS 605/4(e) and 765 ILCS 605/8 (common elements are owned as undivided interests by the unit owners and cannot be partitioned, divided, or separately conveyed). But, the Appellate Court decided that Padma, a unit owner, does not own the common elements of her condominium and lacks standing to defend against a taking of those common elements (Pet. App. 20-21). In addition, the Appellate Court characterizes the tree as not being private property because it stood on the common elements (Pet. App. 18-19), implying that it is public property and therefore not subject to Fifth Amendment protections. By ignoring the state law definition of Padma's property interests, redefining private property as (presumably) public property, and allowing the City to destroy Padma's tree without need or payment of compensation, the Appellate Court committed a judicial taking of property from Padma in violation of the takings clause of the Fifth Amendment. This Court should take this case in order to clarify property rights in view of the position stated in the *Stop the Beach Renourishment* case.

Identification Of Real Property By Its Valid Legal Description Is Analogous To Identification Of A Defendant By His Legal Name

Consider a hypothetical scenario: state law requires a defendant to be prosecuted under his legal name in order to uniquely and properly identify him, otherwise no conviction can be sustained. If "Joe Bloggs" is accused of stealing a sandwich, should "Joe Bloggs" be convicted of theft when he is prosecuted under the name "the Smith family, also the fat guy who lives near them" instead of by his legal name? "Joe Bloggs" protests that he should not be tried as "the Smith family, also the fat guy who lives near them" because: (1) he is not part of "the Smith family"; (2) he is 5'8" tall and weighs 130 pounds, so he is not "the fat guy"; and (3) his birth certificate and other forms of identification state his legal name to be "Joe Bloggs". Is it acceptable for the courts to ignore state law and insist upon sustaining the conviction of "Joe Bloggs" as "the Smith family, also the fat guy who lives near them", when the latter name is wrong? Is doing so a violation of the due process clause of the Fourteenth Amendment?

The situation in this case is analogous. The law in Illinois is that property assessed for taxes must be described so as to be capable of identification or else the assessment and judgment will be void; one valid legal description of the property is the one under which the property was conveyed to the current owner. *Upton v. People ex. Rel. Murphie*, 176 Ill. 632 at 633, 634; 52 N.E. 358 at 358, 359 (1898). The full

legal description of Padma's property, according to its Plat of Survey (C00161), is:

> Lots 1, 2 and 3 in Block 92 in Northwestern University Subdivision of part of the SWQ [Southwest quarter] of Section 7, Township 41 North, Range 14, East of the Third Principal Meridian according to the plat thereof recorded February 19, 1872 as Document Number 13724, in Book 1 of Plats, page 34 in Cook County, Illinois.

Yet, the Appellate Court insists that a judgment must be sustained against Padma's property under the City's incorrect description (C00009-10, C00160):

> Block 92 in Northwestern University Subdivision of that part of the North half of the South half of the Southwest quarter of Section 7, Township 41 North, Range 14 *lying East of the center of Sherman Road in Evanston produced North, also a strip of land 251 feet deep East and West, lying West of and adjoining the North half of the above description*, all East of the Third Principal Meridian, in Cook County, Illinois. [emphasis added to phrases not present in Plat (C00161)]

Unlike Padma's property's Plat of Survey (C00161), the City's description fails to state which lots are included in Padma's property (i.e., "Lots 1, 2 and 3 . . . ", C00161), or where any plat purporting to describe Padma's property is recorded (i.e., " . . . according to the plat thereof recorded February 19,

1872 as Document Number 13724, in Book 1 of Plats, page 34 . . . ", C00161).

The Appellate Court (Pet. App. 14-15, 24-25) insists upon incorporating property, " . . . lying East of the center of Sherman Road . . . " (C00009-10, C00160) into the legal description of Padma's property, and reduces Padma's property to some vague, " . . . strip of land 251 feet deep East and West . . . " (C00009-10, C00160). Padma's property is only 201 feet deep East and West (C00161); no part of it is 251 feet deep East and West. Why is there such insistence on misidentifying Padma's property? Why does the Appellate Court insist that the valid legal description of Padma's property must be ignored in favor of an invalid one? Any property " . . . lying East of the center of Sherman Road . . . " (C00009-10, C00160) has as little relationship to Padma's property as "the Smith family" has to "Joe Bloggs" in the foregoing hypothetical scenario. The additional, " . . . strip of land 251 feet deep East and West . . . " (C00009-10, C00160) is as poor a characterization of Padma's property as "the fat guy" is of "Joe Bloggs" in the foregoing analogy. Neither "Joe Bloggs" nor Padma's property ought to be adjudicated against because neither is identified in a manner that permits them to be accurately identified. This Court should take this case in order to settle this issue related to the due process clause of the Fourteenth Amendment.

Waiver Should Be Applied Uniformly To Both Parties Or Not At All

The Appellate Court alleged waiver (Pet. App. 22, 31) to ignore arguments raised by Padma at trial (Pet. App. 33, C00057). But, the same court in the same case invented arguments on behalf of the City that were not made at trial (C00168-171) or never raised at all. Further, the Appellate Court alleged facts favorable to the City that were not alleged at trial and are contradicted by the record (Pet. 31-36). Thus, the Appellate Court acted as the City's advocate and Padma's opponent rather than as a neutral source of justice. The Appellate Court ignored waiver to provide the City with every weapon to attack Padma, and simultaneously alleged waiver to deprive Padma of any Constitutional shield to defend herself from the City's attacks. The Appellate Court denied Padma the equal protection of the laws, in violation of the Fourteenth Amendment. Padma respectfully asks this Court to grant her the equal protection of the laws by considering this case.

This Case Means More To The City Than Merely The Judgment Amount

The judgment amount in this case is six hundred thirty-five dollars and two cents ($635.02) (C00010). The Appellate Court indirectly questioned Padma's fiscal and legal wisdom in continuing to defend this case (Pet. App. 7). Although Padma's defense in this case has cost significantly more than $635.02, Padma continues to defend because this case threatens

Padma's cherished Constitutional rights, specifically her property rights in her home and her right not to be forced by the City to violate her Hindu religious precepts.

Why did the City insist on unnecessarily killing Padma's tree and why does the City continue to prosecute this civil case? Would it be reasonable to conclude that the City has spent far more than $635.02 in costs, fees (including attorney fees), and expenses to prosecute this case against Padma and her property? If so, then the City's continued prosecution of this case is not based upon fiscal concerns, but upon something that far outweighs those fiscal considerations. Why is it so important for the City to force Padma to violate her religious beliefs? This case must involve issues of compelling importance for the City to expend significant time and resources for a comparatively small judgment amount. Therefore, this Court should take this case.

CONCLUSION

This case involves important issues, including Constitutional religious rights, property rights, and due process and equal protection rights. The decision in this case regarding religious rights conflicts with the decision of this Court in *Salazar v. Buono*. The decision in this case regarding property rights also conflicts with the position of this Court in *Stop The Beach Renourishment, Inc. v. Florida Department Of*

Environmental Protection. These conflicts make this case suitable for review by this Court pursuant to Rule 10. This Court should ensure just resolution of these compelling issues by hearing this case.

Respectfully submitted,

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CERTIFICATION

I hereby certify that this Petition for Rehearing is submitted in good faith and not for delay. This Petition for Rehearing is restricted to the grounds set out in Rule 44.2.

PADMA RAO